

EXHIBIT

4

2 UNITED STATES DISTRICT COURT
3 SOUTHERN DISTRICT OF NEW YORK

4 TRAVELERS CASUALTY AND SURETY COMPANY as
5 Administrator for RELIANCE INSURANCE
COMPANY,

6 Plaintiff,

7 -against-

8 DORMITORY AUTHORITY-STATE OF NEW YORK, TDX
9 CONSTRUCTION CORP. and KOHN PEDERSEN FOX
ASSOCIATES, P.C.,

10 Defendants.

11 Case No. 08-CV-6915 (DLC)

12 (CAPTION CONTINUED)

13
14 July 24, 2008

15 10:21 a.m.

16
17 DEPOSITION of ATHENA CURIS,
18 taken by Defendant, pursuant to Notice,
19 held at the offices of HOLLAND & KNIGHT
20 LLP, 195 Broadway, New York, New York
21 before Wayne Hock, a Notary Public of the
22 State of New York.

1 A. Curis

2 asking, please let me know that and I
3 will be happy to rephrase it.

4 Q. Are you currently employed?

5 A. Yes.

6 Q. Who is your employer?

7 A. I'm self-employed, Fox

8 Industries.

9 Q. You say self-employed.

10 A. Are you the owner of that
11 company?

12 A. One of the principals, yes.

13 Q. Who are the other principals?

14 A. Steve Plagianos.

15 Q. Where is Fox Industries located?

16 A. One Commerce Street in Brooklyn.

17 Q. How long have you been employed
18 by Fox Industries?

19 A. From September of 2002.

20 Q. And in September of 2002, were
21 you a principal of Fox Industries?

22 A. Yes.

23 Q. Where were you employed prior to
24 Fox Industries?

25 A. Trataros Construction.

1 A. Curis

2 Q. How long were you employed at
3 Trataros Construction?

4 A. On or about fifteen years.

5 Q. When you started at Trataros
6 Construction, I'm assuming it would have
7 been about 1987; does that sound right?

8 A. On or about, yeah.

9 Q. When you started at Trataros,
10 what was your title or position?

11 A. I was an estimator.

12 Q. For how long were you an
13 estimator?

14 A. About a year.

15 Q. And after that year, did your
16 job title change?

17 A. Yes, it did.

18 Q. And what did it change to?

19 A. Project coordinator.

20 Q. And how long did you hold that
21 title?

22 A. Several years, four or five
23 years.

24 Q. And at the end of that four or
25 five-year period, did your title then

13

A. Curis

change again?

A. Yes, it did.

Q. What did it change to?

A. Project manager.

Q. How long did you hold that title?

A. Pretty much until the end of my time with Trataros

Q. When did you leave Trataros?

A. Just prior to Fox Industries being incorporated.

Q. Why did you leave Trataros?

A. Trataros was no longer in business.

Q. Were you at any time a principal of Trataros Construction?

A No

Q. Do you know who the principals
of Trataros Construction were?

A. GUS Tratadas

8 Anyone else?

A. I'm not really sure.

Q. Did Steve Plagianos work for
Trataros when you were there?

1 A. Curis

2 Q. What was your first job while
3 you -- after you got out of Pratt
4 Institute?

5 A. Breger Terjesen.

6 Q. When you left Trataros
7 Construction, was it still a going
8 concern?

9 MS. BONACCI: Objection.

10 THE WITNESS: I'm not sure what
11 happens here.

12 MS. BONACCI: I'll make an
13 objection because I have an issue with
14 the way the question is asked or the
15 form of it and then, if you still
16 understand the question, then you
17 would answer it if you still
18 understand it. If you don't
19 understand it, ask him to --

20 A. Please clarify.

21 Q. When you left Trataros, were
22 they still in business?

23 A. No.

24 Q. When did Trataros' business
25 cease?

1 A. Curis

2 A. I believe it was sometime in
3 2002, early 2003.

4 Q. At the time you left Trataros
5 did any employees remain after you had
6 left?

7 A. I believe perhaps my husband may
8 have still been there for a month or so.

9 Q. Do you know why Trataros'
10 principals closed the business?

11 MS. BONACCI: Objection.

12 A. I don't know the specific
13 reason.

14 Q. Do you know if it involved
15 financial issues?

16 A. I don't know that.

17 Q. Do you know what became of
18 Trataros' offices after the company went
19 out of business?

20 A. Could you please rephrase it?

21 Q. Sure.

22 What became of Trataros'
23 office --

24 MR. FROESSEL: Withdrawn.

25 Q. Where was Trataros' office

20

A. Curis

located?

A. 64th Street in Brooklyn.

Q. Is that where you were headquartered pretty much until the day you left?

A. I was pretty much in the field, but that's where the main office was, yes.

Q. Do you know what date that main office closed?

A. I don't know the exact date no

Q. Do you know -- did anyone stay
behind to clean out the office?

A. I don't know that

Q. Did Trataros keep books or records in the office at 64th Street?

A. Yes, they did.

Q. Do you know what became of those records?

A. I believe the attorneys have those records.

Q. What's the basis for your beliefs?

A. I've seen files in Ms. Bonacci's office. In addition, I have seen a

24

A. Curis

subject matter of the deposition notice
with him?

A. **No.**

MR. FROESSEL: Mark this as

(Whereupon, a document entitled
Contract was marked DASNY Exhibit 20
for identification.)

MR. FROESSEL: For the record, we've marked as DASNY Exhibit 20 a contract dated as of August 27, 1998.

Q. Ms. Curis, have you ever seen this document before?

A. Yes, I have.

Q. Can you tell me what it is.

A. It's contract sixteen on the Baruch College project.

Q. And this was a contract between
Trataros and the Dormitory Authority of
the State of New York; correct?

A. Correct.

Q. Did you personally have any involvement in the execution of Trataros' work under this contract?

1 A. Curis

2 A. Yes, I did.

3 Q. What was your involvement?

4 A. I was project manager for
5 contract sixteen.

6 Q. Were you the project manager for
7 contract sixteen throughout the entire
8 duration of that work?

9 A. Yes.

10 Q. Did Trataros have any other
11 employees with responsibilities on
12 contract sixteen at the project?

13 A. Yes.

14 Q. Can you tell me who they were,
15 please.

16 A. Ramesh, the last name is very
17 long, there was Walter Bartels, there was
18 John Clarke, Tom Spinthourakis, Dino
19 Liapes, Bea Fioriello.

20 Q. Was there anyone else you
21 recall?

22 A. There may have been, I just
23 don't recall specifically.

24 Q. What was John Clarke's title
25 with respect to the Baruch College

1 A. Curis

2 A. No.

3 Q. How about John Clarke, have you
4 spoken with him since you left Trataros?

5 A. No.

6 Q. How about Dino Liapes, do you
7 know where he's currently employed?

8 A. Yes, I do.

9 Q. Where is he employed?

10 A. At a Dunkin' Donuts in Brooklyn.

11 Q. When's the last time you spoke
12 with Dino Liapes?

13 A. A year or two.

14 Q. Did Trataros do any other work
15 at Baruch College beside the work done
16 under contract sixteen?

17 A. Yes, we were also under contract
18 fifteen.

19 Q. Did John Clarke have any duties
20 with respect to Trataros' work under
21 contract fifteen?

22 A. The same as contract sixteen.

23 Q. The same duties?

24 A. Yes.

25 Q. Did Walter Bartels have any

32

A. Curis

Q. Did Trataros enter into contract fifteen before it entered into contract sixteen?

A. Yes.

Q. And had work under contract fifteen begun at the project before the contract sixteen work started?

A. Yes.

Q. About how long before the contract sixteen work started would you say the contract fifteen work began, roughly?

A. I don't know.

Q. If you look at DASNY Exhibit 20 and turn about seven pages in, you'll see there's a specifications and drawings listing.

A. Yes.

Q. On the first page of that listing, do you see there's a section 03551, cementitious floor leveling?

A. Yes

Q. Was that specification

33

A. Curis

incorporated into Trataros' contract

sixteen?

A. Yes.

Q. If you turn to the next page, toward the bottom do you see where it says section 09420, epoxy terrazzo?

A. Yes.

Q. Was that specification, the
epoxy terrazzo spec, incorporated into
Trataros' contract sixteen work?

A. Yes.

MR. FROESSEL: Let's mark this as

(Whereupon, a document entitled

General Conditions was marked DASNY
Exhibit 21 for identification.)

MR. FROESSEL: For the record.

we've marked as DASNY Exhibit 21, which is a document entitled General Conditions.

Q. Ms. Curis, I'd ask you to please let me know if you've ever seen that document before.

A. Yes, I have.

34

A. Curis

Q. Could you tell me what that document is.

A. It's the general conditions for the project.

Q. Specifically were these general conditions applicable to contract sixteen?

A. They're pretty much boilerplate, so it would be more than likely similar or the same to contract fifteen, also.

Q. As you sit here today, do you have any reason to believe that these are not the general conditions that were applicable to contract sixteen?

A. No.

Q. If you turn to page six in the general conditions of Exhibit 21. At the top of the page you'll see there's a subparagraph D which says, "the contractor shall develop and implement quality control plans to ensure itself and the owner that all work performed by the contractor and its subcontractors complies fully with all contract requirements."

Do you see that language?

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A. Curis

had been there --

MR. FROESSEL: Withdrawn.

Q. Do you recall how long Walter, Tom, and Dino had been working at the Baruch College project on the contract fifteen work before the contract sixteen work started?

MS. BONACCI: Objection.

A. I don't know.

Q. If you turn to page eighteen of
DASNY Exhibit 21, please.

Do you see at the bottom of the page there's an article twelve, subcontracts?

A. Yes

Q. And do you see section 12.01, subsection C where it says, "the contractor shall be fully responsible for the work, acts, and omissions of subcontractors?"

A. Yes, I do.

Q. In connection with the self-leveling underlayment and the epoxy terrazzo, did Trataros employ any

40

A. Curis

subcontractors?

A. Yes, we did.

Q. Who were they?

A. For the terrazzo, it was Crocetti. And for the underlayment, Bartec. Crocetti also did some underlayment and I believe Klepp Floors did some underlayment, also.

10 MS. SMITH: Could you read the
11 last answer, please.

(Whereupon the requested portion
was read back by the reporter)

Q. In what areas did Klepp Floors put down self-leveling underlayment?

MS. BONACCI: Objection.

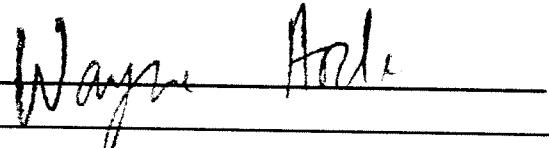
A. I believe it was the gymnasium area.

Q. Is that an area with a wood floor?

A. I believe so.

Q. To your knowledge, did Klepp put down any self-leveling underlayment in areas that received epoxy terrazzo?

A. I don't believe so.

1
2 CERTIFICATION BY REPORTER
34 I, Wayne Hock, a Notary Public of the
5 State of New York, do hereby certify:6 That the testimony in the within
7 proceeding was held before me at the
8 aforesaid time and place;9 That said witness was duly sworn
10 before the commencement of the testimony,
11 and that the testimony was taken
12 stenographically by me, then transcribed
13 under my supervision, and that the within
14 transcript is a true record of the
15 testimony of said witness.16 I further certify that I am not
17 related to any of the parties to this
18 action by blood or marriage, that I am not
19 interested directly or indirectly in the
20 matter in controversy, nor am I in the
21 employ of any of the counsel.22 IN WITNESS WHEREOF, I have hereunto
23 set my hand this 29th day of July
24, 2008.25 

VERITEXT REPORTING COMPANY

1
2 UNITED STATES DISTRICT COURT
3
4 SOUTHERN DISTRICT OF NEW YORK

5
6 TRAVELERS CASUALTY AND SURETY COMPANY as
7 Administrator for RELIANCE INSURANCE
8 COMPANY,

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10 Plaintiff,

11 -against-

12 DORMITORY AUTHORITY-STATE OF NEW YORK, TDX
13 CONSTRUCTION CORP. and KOHN PEDERSEN FOX
14 ASSOCIATES, P.C.,

15 Defendants.

16 Case No. 08-CV-6915 (DLC)

17 (CAPTION CONTINUED)

18 July 25, 2008

19 10:12 a.m.

20 CONTINUED DEPOSITION of ATHENA
21 CURIS, taken by Defendant, pursuant to
22 Notice, held at the offices of HOLLAND &
23 KNIGHT LLP, 195 Broadway, New York, New
24 York before Wayne Hock, a Notary Public of
25 the State of New York.

A. Curiel

MR. FROESSEL: If we could mark
that as DASNY Exhibit 50, please.

(Whereupon, a letter dated May 13, 2002 was marked DASNY Exhibit 50 for identification.)

MR. FROESSEL: For the record, we've marked as DASNY Exhibit 50 a letter on TDX Construction letterhead dated May 13, 2002. It's addressed to Trataros Construction.

Q. Ms. Curis, have you ever seen this letter before?

A. Just give me a moment.

Q. Sure, take your time.

A. (Reviewing) .

More than likely.

Q. Did Trataros respond to this letter from TDX?

A. I really can't say with any specifics unless I see some documents.

Q. Did Trataros still have a field office at Baruch College in May of 2002?

A. I don't know the specific dates, but I know our field office was vacated

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A. Curis

sometime between occupancy between the upper levels and prior to occupancy in the basement.

Q. But you don't recall the time frames in terms of months and years?

A. Unfortunately, no. Time flies when you're having fun.

Q. That's what they say.

You stated yesterday that you became a principal of Fox Industries sometime in 2002; is that correct?

A. Correct, September of 2002.

Q. Were you ever simultaneously a principal of Fox Industries and an employee of Trataros?

MS. BONACCI: Objection to form.

A. There may have been a minor overlap.

Q. When you say, "minor," is that in terms of weeks, months?

A. Probably weeks to a month or so.

Q. Do you have any knowledge of a financing agreement between Travelers Casualty and Surety Company and Trataros?

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A. Curis

limiting your knowledge just you know they
were kept in the office?

A. I know they were kept in the office and I know they were separated by job, by contract.

Q. In terms of what was maintained at the field office, were these certificates at least maintained there for the subcontractors?

A. Not necessarily.

Q. Do you have any particular knowledge as to the Crocetti insurance certificate, was that maintained at the field office?

A. I don't know that specifically. But for me to have requested a renewal, I must have seen it, an existing certificate.

MR. THELANDER: I'm going to show you T86.

(Whereupon, a letter dated March 7, 2003 was marked Exhibit T86 for identification.)

Q. I'm going to show you a document

452

A. Curis

marked T86. It is a letter with
enclosures from TDX to Trataros dated
March 7, 2003.

Take your time. Let me know when you've completed looking at it.

A. (Reviewing) .

Okay.

Q. Do you recall ever seeing this document before today?

A. Not at the time of the writing
of the document, no.

Q. But have you seen it prior to today?

A. Yes.

Q. Could you tell me what your understanding of this document consists of?

A. Quite frankly, Trataros was not in business at this time. I was no longer an employee of Trataros as of the date of this correspondence.

Do you want me to read it now
and give you an understanding of what I
see it is?

453

A. Curis

Q. Sure.

My confusion, I guess, is
because it's still addressed to you.

A. Again, I don't even think
Trataros was in business at the time of
this correspondence. It's regarding some
Testwell laboratory results.

Q. Does it identify any problems or anything with what you just identified?

MS. BONACCI: Objection to form.

MR. PLATEK: Join.

A. Uplifting and debonding.

Q. Uplifting and debonding?

A. That's what's identified as the reference.

Q. Just so I'm correct, you were employed at Trataros up until September of 2002?

A. On or about, yes.

Q. This document is marked as
DASNY 36.

You've seen this document prior
to today; have you not?

A. Yes.

A. Curis

A. I would probably first speak with John Clarke.

Q. Do you recall ever speaking to John Clarke about this DASNY 50 letter in particular?

A. I have no recollection of this letter as I stated previously.

Q. Do you recall the time period February, 2002 to May, 2002 speaking to other employees of Trataros with regard to communications with TDX about problems with terrazzo?

MS. BONACCI: Objection to form.

MR. ZICHELLO: Objection to form.

A. I don't have any specific recollection.

Q. You don't recall?

A. I don't have any specific recollection.

Q. At some point in time did you, yourself, ever consider contacting the Trataros insurer with regard to the possibility of an insurance claim?

A. That's not my responsibility.

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A. Curis

And there was no issue for a claim. There was no -- I was not aware of any uplifting terrazzo, you know, other than the areas that were isolated incidents and repairs that were done during the course of the project.

Q. Who was in charge of deciding whether or not to submit a claim to Trataros' insurer for this project?

A. I don't know.

Q. Did you ever overhear any conversations between any other Trataros employees with regard to submitting any sort of insurance claim to Trataros' insurer?

A. I have no recollection of that.

Q. Do you have any recollection about Trataros reporting a claim to any insurer of any of the subcontractors in contract sixteen?

A. I don't know. I don't have
knowledge of that

MR. THELANDER: Thank you.

That's all I have.

1
2 CERTIFICATION BY REPORTER
34 I, Wayne Hock, a Notary Public of the
5 State of New York, do hereby certify:6 That the testimony in the within
7 proceeding was held before me at the
8 aforesaid time and place;9 That said witness was duly sworn
10 before the commencement of the testimony,
11 and that the testimony was taken
12 stenographically by me, then transcribed
13 under my supervision, and that the within
14 transcript is a true record of the
15 testimony of said witness.16 I further certify that I am not
17 related to any of the parties to this
18 action by blood or marriage, that I am not
19 interested directly or indirectly in the
20 matter in controversy, nor am I in the
21 employ of any of the counsel.22 IN WITNESS WHEREOF, I have hereunto
23 set my hand this 29th day of July
24 , 2008.25 

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